IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.754 OF 2004
IN
SUMMARY SUIT NO.3890 OF 2003

Ketki Rajendra Dhanahukia ..Plaintiff

Vs.

Pawan Pharma and Ors. ..Defendants

Ms.Snehal Shah a/w i/b Negandhi Shah and Himayatullah for the plaintiff

Mr.A.A.Siddiquie for the defendants

CORAM : S.U.KAMDAR, J
DATED : 3RD OCTOBER, 2005

P.C.:

1. The present suit is filed for the recovery of sum of Rs.12,58,512/- in respect of dishonoured cheque with further interest @ 18% totalling to Rs. 19,29,421/-. It is the case of the plaintiff that the said cheque has been issued by the defendants to the plaintiff in respect of goods sold and delivered under various invoices and delivery challans. Delivery Challans are also annexed. However, learned counsel for the defendant has raised a contention that the signature on delivery challans is not that of defendants though there is

also a rubber stamp of the defendants. I do not find any merits in the aforesaid defence. Perusal of the record shows that there is valid delivery of goods.

2. The next defence raised is that the total amount claimed under invoice differs from the cheque amount of Rs.12,58,512/-. It is the case of the plaintiff that the said amount includes the claim towards delayed payment charges and therefore claim is of Rs.12,58,512/- . The defence raised by the defendant is that the cheque was given in blank to one Dr.Reddy's Laboratories who has handed over the same to the plaintiff. I do not find any merits in the aforesaid defence also because even if cheque is issued in blank under the Negotiable Instruments Act the holder of the cheque can deposit the same by filling up the same. In the aforesaid view of the matter, I do not find any merits in any of the defences raised by the defendants. Inspite of the same, however, with a view to give an opportunity to the defendants to defend the suit, I direct the defendants to deposit a sum of Rs.15 lacs within 4 weeks failing which,

plaintiff will be entitled to decree. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 3 years and then renew the same from time to time till further orders of this court. If the amount is deposited then suit is to be transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from the date of deposit of the said amount. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.